

ARTICLE 10

NONCONFORMITIES

PART 1

10-100

NONCONFORMING USES

10-101

Qualification of Nonconforming Uses

1. Notwithstanding the definition of nonconforming building or use presented in Article 15, a building or use shall not be deemed a nonconforming use or building if such was a conforming building or use prior to the effective date of this Ordinance, and such use would otherwise be a conforming use under the provisions of this Ordinance except that it does not meet the minimum building or lot size or minimum yard requirements of the zoning district in which located.
2. Any use existing prior to the effective date of this Ordinance, which is allowed within a particular zoning district as a special permit or a special exception use by the provisions of this Ordinance, shall not be deemed to be a nonconforming use in such district. However, any subsequent replacement or enlargement of such use or the construction of any additional building for such use beyond the extent which existed prior to the effective date of this Ordinance shall be subject to a special permit or special exception obtained in accordance with the provisions of this Ordinance. Such special permit or special exception shall be approved only if the resulting use complies with the standards set forth in Article 5 for the particular use in question.
3. The last federal or state use made on any Federally or State owned facility shall at the time the use becomes subject to the requirements of this Ordinance be deemed a nonconforming use.

10-102

Nonconforming Uses Which May Be Continued and Enlarged

1. The following nonconforming uses may be continued and, upon obtaining a special exception from the Board in accordance with the provisions of Article 5, such use may be enlarged subject to the conditions set forth in Paragraphs 2 through 4 below.
 - A. A single family detached dwelling in any district where such a dwelling is not permitted by the provisions of this Ordinance.
 - B. A commercial use allowed as a permitted, special permit or special exception use in a Commercial District of one class under the provisions of this Ordinance, but located in a C District of another class where such use is not allowed.
 - C. Any nonconforming use which has been in existence since May 9, 1968.
2. Such uses as set forth in Paragraph 1 may be enlarged to a total aggregate extent not to exceed twenty-five (25) percent of the area of land occupied by such nonconforming use and to a total aggregate extent not to exceed twenty-

five (25) percent of the gross floor area of the building in which such nonconforming use is conducted; provided that such enlargement shall never exceed any applicable maximum floor area ratio prescribed for the zoning district in which located.

3. Structural alterations may be made in a building housing a nonconforming use set forth in Paragraph 1 above, but only to a total aggregate extent not to exceed fifty (50) percent of its current appraised value according to the records of the Supervisor of Assessment, unless, in the opinion of the Board alteration, replacement and/or addition to a structure, will improve the compatibility of the use in relation to other properties in the area.
4. Whereas a single family detached dwelling may be remodeled, extended, expanded or enlarged in accordance with the provisions of this Section, in no instance shall such structure be used to accommodate a greater number of dwelling or lodging units than such structure accommodated prior to any such work.

10-103

Regulations Controlling Other Nonconforming Uses

1. Any nonconforming use, other than those specified in Section 102 above may be continued but shall not be enlarged or extended, nor shall any structural alteration be made in any building in which such use is conducted.
2. Any nonconforming use may be extended to occupy any part of a building that was manifestly arranged or displayed for such use at the time of the effective date of this Ordinance, but no such use shall be extended to occupy any land outside such building. Except as provided in Section 102 above, no nonconforming use shall be extended to occupy a greater area of land than that occupied by such use prior to the effective date of this Ordinance.
3. Nothing in this Section shall be deemed to prevent keeping in good repair a nonconforming building or a building in which a nonconforming use is conducted, but no such building that is declared by any authorized County official to be unsafe or unlawful by reason of physical condition shall be restored, repaired or rebuilt.
4. If a building in which a nonconforming use is conducted is moved for any distance for any reason, then any future use of such building shall be in conformity with the regulations specified by the Ordinance for the zoning district in which such building is located.
5. If a building in which a nonconforming use is conducted is hereafter removed, the subsequent use of land on which such building was located and the subsequent location and use of any building thereon shall be in conformity with the regulations specified by this Ordinance for the zoning district in which such land is located.
6. A nonconforming building or a building in which a nonconforming use is conducted that is destroyed or damaged by any casualty to any extent not exceeding fifty (50) percent of its current appraised value according to the

records of the Commissioner of Revenue may be restored within two (2) years after such destruction or damage but shall not be enlarged except as provided in Section 102 above. If any such building is so destroyed or damaged to an extent exceeding seventy-five (75) percent of its value as above, it shall not be reconstructed except:

- A. For a conforming use.
 - B. If the building is used for agricultural purposes and the floors and foundation walls are of concrete and/or other masonry which are not practical to move.
 - C. If the nonconforming location is necessary to meet any requirement or regulation of the Health Department.
 - D. If the nonconforming building is a single family detached dwelling, in which event it may be reconstructed within two (2) years after the aforesaid destruction or damage so as to occupy the same space that it occupied prior to such destruction or damage or any part thereof.
7. Any use of land, buildings or structures, lawfully existing at the time of adoption of this Zoning Ordinance, which does not conform to the regulations and restrictions prescribed for the district in which it is situated, may be continued only so long as the then existing use or a more restrictive use, as provided for in sub-paragraphs (a) and (b) hereof, continues and/or is not discontinued.
- A. If a nonconforming use is discontinued for a continuous period of two (2) years or more, other than for reasons beyond the control of the owner of the property, except as provided in paragraph 6 above, the land and buildings theretofore devoted to such nonconforming use shall thereupon be subject to all the regulations as to use for the Zoning District in which such land or buildings are located as if such nonconforming use had never existed.
 - B. Notwithstanding any other provisions of the Ordinance, a more restricted nonconforming use may be substituted for an existing nonconforming use upon application to the Zoning Administrator for a zoning permit. The Zoning Administrator shall issue such a permit in the event the following standards are satisfied by the applicant.
 - (1) That the proposed use is such that it will definitely have a lesser adverse effect on the use or development of neighboring properties than the existing nonconforming use, and will not discourage the appropriate development and/or use of adjacent land or buildings or impair the value thereof to an extent which is definitely less than the existing nonconforming use.
 - (2) That the proposed use is such that the pedestrian and vehicular traffic generated by the same will be definitely less hazardous or in less conflict with the existing and anticipated traffic in the neighborhood

and on the street serving the site than that generated by the existing nonconforming use.

- (3) That the facilities required for utilities, drainage, parking, loading and other necessary facilities to serve the proposed more restricted nonconforming use are definitely less than those required for the existing nonconforming use, and that the parking and loading requirements necessary for such proposed more restricted nonconforming use are definitely less than those required for the existing nonconforming use.
8. No use which is accessory to a principal nonconforming use shall continue after such principal use shall cease or terminate.
9. The rights pertaining to a nonconforming use or building shall be deemed to pertain to the use or building itself, regardless of the ownership of the land or building on or in which such nonconforming use is conducted or of such nonconforming building or the nature or the tenure of the occupancy thereof.
10. All of the foregoing provisions relating to nonconforming uses and buildings shall apply to all nonconforming uses and buildings existing on the effective date of this Ordinance and to all uses and buildings that become nonconforming by reasons of any amendment thereof. The provisions shall not apply, however, to any use established or buildings erected in violation of law, regardless of the time of establishment or erection.

PART 2

10-200

SUBSTANDARD SUBDIVISIONS

10-201

Applications

The regulations set out in this Part shall apply to the resubdivision of any subdivision defined as a substandard subdivision in Article 15; provided, that such resubdivision of such substandard subdivision complies with all provisions of Appendix C of The Code, The Subdivision Ordinance.

All other provisions applicable to the zoning district in which the property to be resubdivided hereunder lies, not specifically modified by this Part, shall continue to apply.

10-202

Lot Area Requirement

No structure shall be erected or placed on a lot or building site in the development of a resubdivision of a substandard subdivision unless such lot or building site complies with the following:

1. The average area of the lots in such a resubdivision shall not be less than the average area of the lots in the subdivision heretofore lawfully dedicated and recorded, plus one-half (1/2) the difference between that average and the

average area required for a lot in the zoning district in which the subdivision lies.

2. The minimum lot area in such subdivision shall be not less than ten (10) percent smaller than the above described average lot area except that no lot proposed for a single family detached dwelling shall in any case contain an area of less than 6,500 square feet or such greater minimum area as may be required by the Health Department.

10-203

Lot Width Requirement

The minimum width of any lot shall be not less than the lot width required in the next less restrictive zoning district in which such subdivision lies. In no case shall any interior lot proposed for a single family detached dwelling have a width of less than fifty (50) feet, nor shall any corner lot proposed for a single family detached dwelling have either a width or a depth of less than seventy (70) feet. All such widths or depths shall be measured at the required front yard line.

10-204

Yard Requirements

1. The front yard requirement in resubdivisions of subdivisions developed as a substandard subdivision shall be the same as the front yard requirement in the zoning district in which the property lies.
2. There shall be on each side of every building a side yard not less than that required in the next less restrictive zoning district in which the property lies. In no case, however, shall any side yard be less than ten (10) feet in width.
3. No part of a building shall be erected within twenty (20) feet of the rear lot lines.

10-205

Notwithstanding the provisions of 201 through 205 above, in the RA and RC zoning districts lots of a substandard subdivision that are contiguous, conventional and which contain less than 50 acres each may be resubdivided as a cluster subdivision provided that:

1. The number of lots after resubdivision is not greater than the number of substandard lots to be resubdivided;
2. The open space qualifies and is platted as non-common open space in accordance with the provisions of Article 2-700 and constitutes one lot of not less than 75 percent of the gross site area;
3. If private streets are to serve 20 or more lots Type I private street standards shall apply; for private streets to serve more than 10 but less than 20 lots, all Type II standards shall apply; Type III private streets are permitted when the street will serve less than 10, non-common open space lots.

10-206

Village Substandard Subdivisions

Notwithstanding the provisions of 201 through 205 above, in the Village Zoning Districts, lots of a substandard subdivision or subdivisions which were of record prior to May 9, 1968 that are contiguous, and conventional may be resubdivided as a cluster subdivision provided that:

1. The number of lots after resubdivision is not greater than (i) the number of existing substandard lots to be resubdivided or (ii) the number of existing residential dwelling units located on such lots, whichever is greater;
2. The resubdivision contains a minimum of 25% of total area in open space, which may be satisfied with common open space, non-common open space or a combination of common and non-common open space platted and dedicated as one or more lots. Notwithstanding the provisions of Section 3-408, the Board of Supervisors may modify the open space requirement to allow a reduction to 25 percent open space in conjunction with the resubdivision plat approval, provided the applicant can show that the lot layout and street connections improve the overall development design, drainage, site access, preservation of historic structures or features, or integration with the historic character of the village.
3. If private streets are to serve the resubdivision, Type II private street standards shall apply;
4. Public or private streets shall have a minimum right-of-way forty (40) feet in width.
5. The lots shall be served by sewer service provided by the Fauquier County Water and Sanitation Authority, Town of Warrenton, Town of Remington or the Vint Hill Economic Development Authority, unless a special exception is obtained in accordance with the requirements of Section 5-3000 of this Ordinance;
6. The resubdivision shall be in accordance with Subdivision Ordinance Section 4-12.

PART 3

10-300

NONCONFORMING BUILDINGS

10-301

Expansion in Required Yards

Buildings which are nonconforming by reason of not meeting minimum yard requirements may be expanded in a minimum yard area where:

1. The addition encroaches on such yard a distance equal to or less than did the buildings on the effective date of this Ordinance, and

2. The area of the addition which encroaches on the minimum yard does not exceed 30% of the area encroaching on said yard on the effective date of this Ordinance.